



September 10, 2002

Ms. Traci S. Briggs  
Assistant City Attorney  
City of Killeen  
402 North Second Street  
Killeen, Texas 76541-5298

OR2002-5045

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168372.

The Killeen Police Department (the "department") received a request for information relating to an arrest, including witness statements, video, and police reports. You state that the department has released some of the requested information. The department claims that a responsive videotape is excepted from disclosure under sections 552.108 and 552.119 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We assume that the department neither holds nor has access to any other information that is responsive to this request. In the event that such information existed when the department received this request, then it must be released at this time. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). Chapter 552 of the Government Code does not require the department to release information that did not exist when it received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

You inform this office that the department has released the responsive offense and arrest reports. However, your letter to the requestor reflects that social security, driver's license, license plate, and vehicle identification numbers were redacted from these documents. A governmental body must ask this office to decide whether requested information is excepted from disclosure, unless there has been a previous determination that the information falls within an exception under chapter 552 of the Government Code. *See* Gov't Code §§ 552.006, .301(a), .302. You do not inform us that the department has been granted a previous determination with regard to any of the information that was withheld. *See* Open Records Decision No. 673 (2001).

Furthermore, the department is not necessarily required to withhold a social security, driver's license, license plate, or vehicle identification number. A social security number may be excepted from public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990.<sup>1</sup> *See* Open Records Decision No. 622 at 2-4 (1994). You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the department to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the responsive offense and arrest reports was obtained or is maintained pursuant to such a law and is therefore excepted from disclosure under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I) of the federal law. Nevertheless, we caution the department that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the department should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 of the Government Code is applicable to Texas driver's license, license plate, and vehicle identification numbers. Section 552.130 excepts from disclosure information that relates to

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1)-(2). Thus, the department must withhold a Texas driver's license, license plate, or vehicle identification number from public disclosure under section 552.130.

We also note that a requestor may have a special right of access to a social security, driver's license, license plate, or vehicle identification number. *See* Gov't Code § 552.023.<sup>2</sup> Thus, a person's social security number may not be withheld from that person or the person's authorized representative under section 552.101 in conjunction with section

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<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential.

<sup>2</sup>Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

405(c)(2)(C)(viii)(I) of title 42 of the United States Code. Likewise, a person or a person's authorized representative has a special right of access to the person's Texas driver's license number and to Texas license plate and vehicle identification numbers, if the person owns an interest in the vehicle. The department may not withhold information under section 552.130 if it is subject to a special right of access under section 552.023.

Next, we address the department's claim under section 552.108 of the Government Code with regard to the submitted videotape. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). In this instance, the department states that the release of the videotape would interfere with a pending criminal prosecution. Based on this representation, we find that the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the videotape under section 552.108. As we are able to make this determination, we need not address the department's claim under section 552.119.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

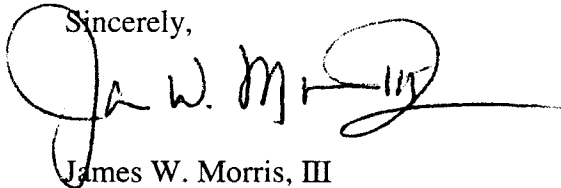
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J W. Morris, III", with a stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 168372

Enc: Submitted videotape

c: Mr. Benito Rodriguez  
604 Rein Drive  
Killeen, Texas 76542  
(w/o enclosures)